



Paper 10

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OFFICE OF PETITIONS

In re Application of
Thomas W. Lynch
Application No. 09/310,508
Filed: May 12, 1999
Attorney Docket No. THS003

DECISION GRANTING PETITION

This is a decision on petition under 37 CFR 1.137(a), filed July 28, 2003 to revive the above-identified application which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition under 1.181 is **Granted**.

This application became abandoned for failure to timely file a proper reply to the Notice of Non-Compliant Amendment mailed October 31, 2002. This application became abandoned December 2, 2002. This decision precedes the mailing of a Notice of Abandonment.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by (1) a proposed response to continue prosecution of the abandoned application, or filing of a continuation application, unless either has been previously filed; (2) the petition fee required by 37 CFR 1.17(l); (3) an adequate verified showing of the cause of unavoidable delay; and (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

Decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." *Smith v. Mossinghoff*, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Specifically, reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable. An application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office. *Ex parte Pratt*, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887). The

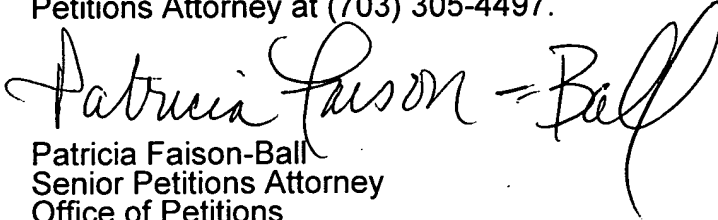
Petitioner claims to have timely filed the response via facsimile transmission on November 13, 2002. The showing submitted by petitioner establishes that on November 13, 2002, a facsimile was successfully transmitted and received by the United States Patent and Trademark Office, however no such submission has been matched with the file herein.

The confirmation report does in fact indicate that on November 13, 2002, 13 pages were sent via facsimile transmission to 703-746-7239 and thus, the proof presented does indicate that petitioner diligently filed a timely reply although the PTO does not have a record of having received the reply to the Notice of Non-Compliant Amendment via facsimile transmission.

In light of this showing, it is concluded that reasonable care was taken by the petitioner to file a timely reply. Accordingly, the **Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn**. No fee is required for a petition to withdraw the holding of abandonment. Therein, the petition fee under 37 CFR 1.137 (a) in the amount of \$55.00 will be refunded.

This file is being forwarded to Technology Center 2142 for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.


Patricia Faison-Ball
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Office of Petitions

¹A certificate of facsimile transmission is provided as proof of petitioner's diligence.